

REMARKS

Claims 43-51 and 58-68 remain pending in the instant application. All claims presently stand rejected. Claims 43, 45, 46, 50, 58-61, 63-66 are amended herein. Claims 52-57 are hereby cancelled without prejudice. Entry of this amendment and reconsideration of the pending claims are respectfully requested.

Double Patenting

The Examiner rejected claims 43, 44, 48, 50, 52, 58, 59, 65, and 67 under the judicially created doctrine of obviousness-type double patenting over claims 1, 4, 6, 8, 9, 11, 12, and 14-16 of U.S. Patent No.: 6,658,031 B2 to Tuganov et al. (hereinafter "Tuganov '031"). The Applicants respectfully request that the enclosed timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) be entered to overcome the instant nonstatutory double patenting rejections as suggested in the Office Action mailed May 9, 2005.

The Applicants wish to note that the filing of the enclosed Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(c) is not an admission to the propriety of the rejection. M.P.E.P. § 804.02 (8th Ed. February 2003); Quad Environmental Technologies Corp. v. Union Sanitary District, 20 USPQ2d 1392 (Fed. Cir. 1991). As stated by the Federal Circuit in the Quad Environmental Technologies decision, the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Claim Rejections – 35 U.S.C. § 102

Claims 43-68 stand rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,330,253 to Tuganov et al. (hereinafter "Tuganov '253").

A claim is anticipated only if each and every element of the claim is found in a single reference. M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987)). "The identical invention must be shown in as complete detail as is contained in the claim." M.P.E.P. § 2131 (citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989)).

Amended independent claim 43 now recites, in pertinent part, “a controller coupled to the compensating member to thermally control said compensating member.” Applicants respectfully submit that Tuganov ‘253 fails to disclose a controller coupled to a compensating member.

To be sure, FIGs. 11A-11D of Tuganov ‘253 illustrate a compensating element 1118 coupled to a retroreflector 1126. However, FIGs. 11A-11D, fail to disclose any control system coupled to compensating element 1118. This is because Tuganov ‘253 discloses compensating element 1118 as a passive element that “work[s] by expanding/contracting along the optical axis by an amount sufficient to offset any temperature related contraction/expansion in the optical path length.” *Tuganov ‘253*, col. 14, lines 13-16. In fact, it is noteworthy that the title of Tuganov ‘253 is “**Passive** Thermal Stabilization of the Tuning Element in a Tunable Laser.” Passive elements do not use a “controller”, as recited in claim 43. Tuganov ‘253 certainly does disclose such a controller.

The Examiner cites FIG. 10 of Tuganov ‘253 as “show[ing] the thermoelectric controller coupled to compensating member and thermally adjust length of compensating member (col. 18:55-65)...” *Office Action* mailed May 9, 2005, page 2. However, Applicants have reviewed both FIG. 10 and the corresponding text of the specification of Tuganov ‘253 and are unable to find illustration or discussion of any such thermoelectric controller.

Amended independent claim 58 now recites, in pertinent part, “**actively controlling** an optical path length of said resonant cavity by thermally adjusting a length of a compensating member coupled to said end reflector.” For the reasons discussed above, Applicants respectfully submit that Tuganov ‘253 fails to disclose actively controlling an optical path length by thermally adjusting the length of a compensating member. As mentioned, Tuganov ‘253 discloses passive structure that does not and cannot actively control an optical path length via thermally adjusting the length of a compensating member.

Amended independent claim 65 now recites, in pertinent part, “means for **actively thermally adjusting** a length of the optical path between said reflectors.” For the reasons discussed above, Applicants respectfully submit that Tuganov ‘253 fails to

disclose means for actively thermally adjusting as disclosed in the specification of the instant patent application.

Consequently, Tuganov '253 fails to disclose each and every element of claims 1, 58, and 65, as required under M.P.E.P. § 2131. Accordingly, Applicants request that the instant §102 rejections of claims 1, 58, and 65 be withdrawn.

Dependent claims 44-51, 59-64, and 66-68 are novel over the prior art of record for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicants respectfully request that the instant § 102 rejections for claims 44-51, 59-64, and 66-68 be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

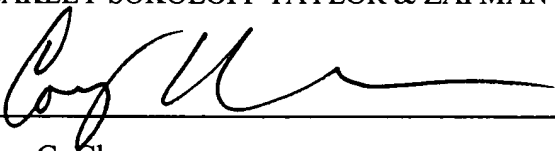
CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

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Date: July 5, 2005
~~July 2005~~



Cory G. Claassen
Reg. No. 50,296
Phone: (206) 292-8600